COURT NO.2

IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

Income Tax Appeal No. 210 of 2004

Commissioner of Income Tax, Dehradun

.....Appellant

Versus

Reading & Bates Exploration Co.,
as agent of Mr. Malia J.

..... Respondent

Shri P. Maulekhi, ld. Standing counsel for the Revenue.
Ms. Krishi Shukla, Advocate for the respondent.

Dated: April 10, 2006

Coram: Hon. M.M. Ghildiyal, J.
Hon. B.C. Kandpal, J.

Both the parties are ready to argue the matter today.

2. This appeal has been filed by the Revenue under Section 260-A of the Income Tax Act, 1961(*hereinafter will be referred to as the Act*) Challenging the impugned order dated 20.07.2004 passed by Income Tax Appellate Tribunal, Delhi Benches (C), New Delhi in M.A. No.109/Del/2004 (in ITA Nos. 2410 to 2415/Del/98, 2366 to 2367/Del/98, 2370 to 2372/Del/98, 2374 to 2375/Del/98, 2377, 2379, 2381/Del/98, 2361 to 2364/Del/98, 2416, 2418 and 2420/Del/98 for the assessment year 1994-95, by which the Tribunal has dismissed the application of the appellant for recalling the order of the Tribunal decided in aforesaid appeal numbers. The questions framed in the memo of appeal for our consideration are as follows:-

A- Whether the ITAT was justified in holding that order of the Tribunal did not suffer from a mistake apparent form record on the basis of subsequent judgment of Uttaranchal High Court?

B- Whether the judgment of Uttaranchal High Court, even if pronounced subsequently, is not binding upon the Tribunal on the issue arising from the order of an AO functioning within the jurisdiction of the Hon'ble Uttaranchal High Court?

C- Whether the ITAT was right in holding that under the facts and circumstances of the case there was no scope of application of Section 254(2) of the Act?

3. Brief facts of the case as narrated by the appellant are that assessee filed an appeal against the assessment order dated 15.01.1997 before the Commissioner (Appeals). The said appeal was dismissed by Commissioner of Income Tax (Appeals) dated 08.01.1998. Thereafter, the assessee filed an appeal before Income Tax Appellate Tribunal, Delhi Bench (B) Delhi which was decided in favour of the assessee. The issue under consideration was decided by this Court and the question was decided in favour of the department and against the assessee. The Revenue preferred a recall application with a request to amend its earlier consolidated order dated 16.07.2003 in ITA No.2410/Del/98 taking into account the judgment of this Court. The Tribunal did not accept the ground raised by the Revenue in the application and dismissed the same with the observation that it cannot be said that the order or the Tribunal suffered form a mistake apparent from record on the basis of subsequent judgment of this Court. It was also observed that the fact of admitting SLPs by the Supreme Court itself is sufficient to hold that there was contentious and arguable issue

requiring a long drawn process of reasoning. Feeling aggrieved, the Revenue has come up in the appeal.

4. We have heard learned counsel for the parties and perused the entire evidence on record.

5. The question with regard to off period salary was answered by the Division Bench of this Court in the favour of the Revenue in the case of *Commissioner of Income Tax and another Vs. Sedco Forex Internationa Drilling Co. Ltd. reported in (2003) 264 ITR 320*. The Special Leave Petition was filed against the judgment by the Sedco Forex International Drilling Co. Ltd., which was converted into Civil Appeal Nos. 351-355 of 2005. The Hon'ble Apex Court in "**Sedco Forex International Drill Inc. and Others Vs. Commissioner of Income Tax, Dehradun and Another, JT 2005(9) SC 639**" has held that since the Explanation to Section 9(i)(ii) of the Income Tax Act, 1961 was amended by the Finance Act 1999 and was prospective, therefore, it could not be made applicable in the previous years i.e. to say that no retrospective effect can be given to the Explanation, if the assessment proceedings are pending after the said amendment and accordingly the judgment of Division Bench of this Court was set aside as the assessment year in dispute was prior to 1999.

6. In the present case also, the assessment year is prior to 1999, thus the assessee cannot be taxed in view of the law laid down by the Hon'ble Apex Court "**Sedco Forex International Drill Inc. and Others Vs. Commissioner of Income Tax, Dehradun and Another (Supra).**

7. Accordingly, the appeal is dismissed. The questions are answered in favour of the assessee and against the Revenue. No order as to costs.

(B.C. Kandpal, J.) **(M.M. Ghildiyal, J.)**

Rajeev Dang